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4 CICILY BRANCH,
5 Plaintiff,
6 v.
7 ROBERT A. MCDONALD,
8 Defendant.

9 Case No. 14-cv-03846-DMR

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11 **ORDER TO PROVIDE
SUPPLEMENTAL BRIEFING**

12 California courts have held that the Fair Employment and Housing Act (FEHA), California
13 Government Code section 12940(n), “allows an independent cause of action for employees whose
14 employers fail to engage in the interactive process,” without “requir[ing] proof of the elements
15 required by the [Americans with Disabilities Act].” *See Wysinger v. Automobile Club of S. Cal.*,
16 157 Cal. App. 4th 413, 425 (2007); *A.M. v. Albertsons, LLC*, 178 Cal. App. 4th 455, 463-64
17 (2009) (“[t]he failure to accommodate and the failure to engage in the interactive process are
18 separate, independent claims involving different proof of facts.”).

19 However, this lawsuit asserts federal rather than state law claims. Under federal law,
20 whether plaintiffs may maintain a separate cause of action for failure to engage in the interactive
21 process, or whether it is subsumed in a failure to accommodate claim, is less clear. *See, e.g.,*
22 *Rehling v. City of Chicago*, 207 F.3d 1009, 1015-1016 (7th Cir. 2000); *Walter v. United Airlines,*
23 *Inc.*, 232 F.3d 892, *4 (4th Cir. 2000).

24 The court orders the parties to submit simultaneous further briefing no more than ten pages
25 in length by **July 15, 2015**. The parties shall address whether Plaintiff may assert a cause of action
26 under the Rehabilitation Act for Defendant’s alleged failure to engage in the interactive process in
27 good faith, separate from her claim that Defendant failed to provide her with a reasonable
28 accommodation. If the party contends that federal law permits Plaintiff to state a separate,

1 standalone claim for failure to engage in the interactive process, the party shall also address the
2 question of when that claim accrued, and whether Plaintiff timely exhausted her administrative
3 remedies regarding that claim.

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5 **IT IS SO ORDERED.**

6 Dated: July 1, 2015

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Donna M. Ryu
United States Magistrate Judge